Supreme Court, U.S.
FILED
NOV 13 1995
OFFICE OF THE CLERK

(3)

No. 95-390

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

THE HONORABLE ESTHER R. SYLVESTER, NANCY SOBOLEVITCH, GEOFF GALLAS, MATTHEW TIERNEY, JOSEPH DI PRIMIO AND ANDREA HOFFMAN-JELIN,

Petitioners,

v.

ANDRE M. BRYANT AND FATHERS' AND CHILDREN'S EQUALITY, INC.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

SUGGESTION OF MOOTNESS AND MOTION TO VACATE

ARLIN M. ADAMS*
MICHAEL J. BARRY
**Counsel of Record*

SCHNADER HARRISON SEGAL & LEWIS
Suite 3600, 1600 Market Street
Philadelphia, Pennsylvania 19103-4252
215-751-2072

DAVID M. DONALDSON

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS
Suite 1414, 1515 Market Street
Philadelphia, Pennsylvania 19102

Counsel for Petitioners

BEST AVAILABLE COPY

11pp

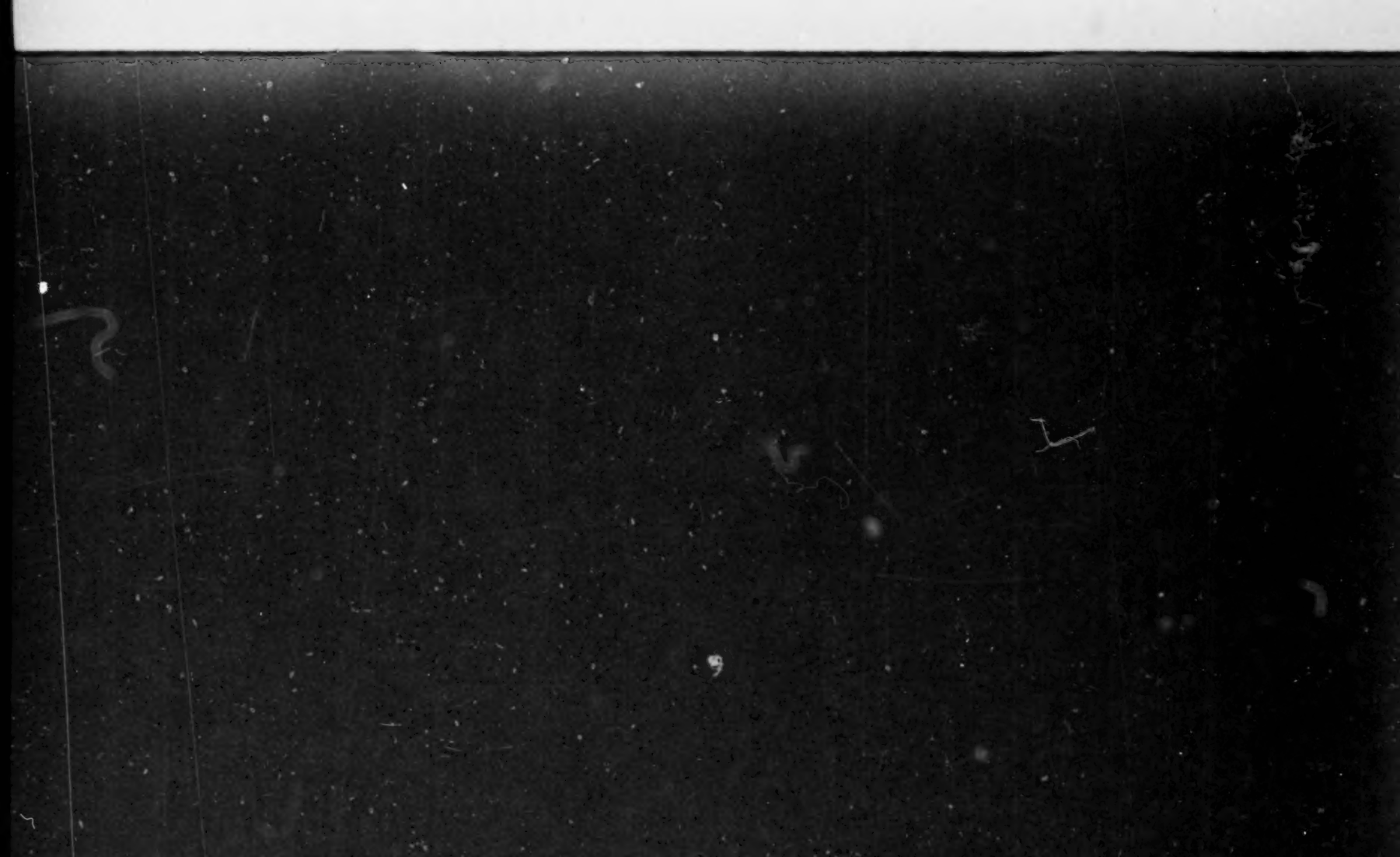

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTRODUCTION 1

ARGUMENT 2

CONCLUSION 6

APPENDIX

Bryant v. Sylvester, No. 94-1990
(E.D. Pa. October 16, 1995) 1a

TABLE OF AUTHORITIES

Cases **Page**

Great Western Sugar Co. v. Nelson, 442 U.S. 92 (1979) ... 4

Heitmuller v. Stokes, 256 U.S. 350 (1921) 4

U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership, 115 S. Ct. 386 (1994) 3, 4, 5

United States v. Hamburg-American Co., 239 U.S. 466 (1915) 4

United States v. Munsingwear, 340 U.S. 36 (1950) ... 2, 3, 4

No. 95-390

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

THE HONORABLE ESTHER R. SYLVESTER, NANCY SOBOLEVITCH, GEOFF GALLAS, MATTHEW TIERNEY, JOSEPH DI PRIMIO AND ANDREA HOFFMAN-JELIN,

Petitioners,

v.

ANDRE M. BRYANT AND FATHERS' AND CHILDREN'S EQUALITY, INC.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

SUGGESTION OF MOOTNESS AND MOTION TO VACATE

INTRODUCTION

The pending petition for certiorari seeks review of a decision by the court of appeals that a district court's denial of a motion to dismiss based on the *Rooker-Feldman* doctrine is not immediately appealable as a collateral order.

On October 16, 1995, after the filing of the petition for certiorari and after the Council of Chief Justices had submitted an amicus curiae memorandum in support of the petition, Andre Bryant and Fathers and Children's Equality, Inc., the prevailing parties below and respondents here, orally moved in the district court to voluntarily withdraw their complaint. Petitioners accepted the withdrawal. The district court (Brody, J.) then dismissed the complaint without prejudice. (A copy of the district court's order of October 16, 1995 appears in the appendix.) As a result, there is no longer a live case or controversy before this Court, and the issue presented by the petition for certiorari is now moot.

However, because petitioners have properly sought review by this Court of the court of appeals' judgment and, through respondents' action, have been deprived of the opportunity to present the merits to this Court, applicable case law and justice require that this Court vacate the judgment of the court of appeals and remand the action to that court with instructions to vacate the district court's order denying petitioners' motion to dismiss based on the *Rooker-Feldman* doctrine.

ARGUMENT

The leading case from this Court on vacatur is *United States v. Munsingwear*, 340 U.S. 36 (1950). There, this Court declared that when a case becomes moot while awaiting review by this Court, the Court should retain jurisdiction, vacate the judgment below and remand with instructions to dismiss (*id.* at 39-40):

> The established practice of the Court in dealing with a civil case from a court in the federal system which has

> become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss. That was said in *Duke Power Co. v. Greenwood County*, 299 U.S. 259, 267, to be "the duty of the appellate court." That procedure clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance.

Last year, in *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 115 S. Ct. 386 (1994), this Court reaffirmed and clarified the rules governing vacatur. Justice Scalia, speaking for a unanimous Court, explained that the remedy of vacatur is essentially equitable in nature and that the Court's decision whether to vacate an opinion of a lower court due to mootness should be guided by evaluating the actions taken by the party requesting relief from the lower court's judgment. "The principal condition to which we have looked is whether the party seeking relief from the judgment below caused the mootness by voluntary action." *Id.* at 390-91.

Where the party seeking relief caused the mootness by his or her own initiative, vacatur is improper. Where, however, the mootness was caused by no action of the party seeking relief, but by "mere happenstance" or by the unilateral action of the opposing party, as is the case here, vacatur is appropriate. This Court explained (*id.* at 390-92):

> The reference to "happenstance" in *Munsingwear* must be understood as an allusion to this equitable tradition of vacatur. A party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness be forced to

> acquiesce in the judgment. The same is true when mootness results from unilateral action of the party who prevailed below.

See United States v. Hamburg-American Co., 239 U.S. 466, 468 (1915) ("[W]e are of the opinion that the ends of justice exact that the judgment below should not be permitted to stand when without any fault of the [petitioner] there is no power to review it upon the merits, but that it should be reversed and the case be remanded to the court below with directions to dismiss the bill without prejudice to the right of the [petitioner] in the future to assail any actual contract or combination deemed to offend against the Anti-Trust Act"); *see also Great Western Sugar Co. v. Nelson*, 442 U.S. 92, 94 (1979) ("Because the fact of mootness is clear, ... and because the law as laid down by this Court in *Duke Power Co*, *supra*, and *United States v. Munsingwear, Inc.*, *supra*, is equally clear, the petition for certiorari is granted, the judgment of the Court of Appeals is vacated, and the case is remanded to the Court of Appeals with directions to vacate the District Court's judgment and to remand the case for dismissal of respondent's complaint."); *Heitmuller v. Stokes*, 256 U.S. 350, 362-63 (1921) ("In the case now before us, without fault of the plaintiff in error, the defendant in error, after the proceedings below, practically ended the controversy by parting with title to the premises, thus causing the case to become moot.")

In *U.S. Bancorp*, this Court held that where mootness results from a settlement -- a voluntary action taken by the party requesting vacatur -- equity does not require that the judgment be vacated. Where, however, mootness results not from a voluntary action by the petitioner, but by the unilateral action of the prevailing party in the court below, equity demands that the judgment below be vacated and the case be

remanded with directions to vacate the order of the district court.

Respondents' decision to voluntarily withdraw their complaint mooted this case and prevented petitioners from presenting the merits of their petition to this Court. Unlike the situation in *U.S. Bancorp*, this case does *not* involve a settlement agreement freely entered into by the parties that resolved the underlying dispute. To the contrary, petitioners properly sought review of the Third Circuit's decision by petitioning this Court for certiorari. Only after the petition was filed did respondents voluntarily withdraw the complaint, and the district court dismiss the case without prejudice, thus allowing the respondents to seek the same relief at some time in the future. The fact that petitioners did not oppose the motion to withdraw the complaint does not make this situation akin to the settlement in *U.S. Bancorp*. Rather, when respondents unexpectedly made their motion, petitioners merely accepted the dismissal of the complaint without prejudice, with the expectation that the parties would be restored to their former positions. In this situation, equities demand that the decision by the Third Circuit be vacated and the parties be restored to the status quo that existed before this litigation began.

The decision by the Third Circuit that the denial of a motion to dismiss based on the *Rooker-Feldman* doctrine is not immediately appealable as a collateral order was the first time any United States court of appeals addressed the issue. If the Third Circuit's decision is allowed to stand, therefore, it will be the only source of authority for any federal court. Because of the importance of this issue, as set forth in the petition for certiorari, and because respondents' unilateral action has deprived petitioners of the opportunity to present the merits of

the issue to this Court, the judgment of the Third Circuit cannot be allowed to stand and must be vacated.

CONCLUSION

Because this appeal has been mooted by the unilateral action of respondents -- their voluntary withdrawal of their complaint and the resulting dismissal by the district court -- this Court should vacate the judgment of the United States Court of Appeals for the Third Circuit and remand this case to that court with instructions to vacate the district court's order.

Respectfully submitted,

ARLIN M. ADAMS*
MICHAEL J. BARRY
*Counsel of Record

SCHNADER HARRISON SEGAL & LEWIS

DAVID M. DONALDSON

ADMINISTRATIVE OFFICE OF
PENNSYLVANIA COURTS

Counsel for Petitioners

Dated: November 10, 1995

APPENDIX

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRYANT	:	CIVIL ACTION
	:	
v.	:	
	:	No. 94-1990
SYLVESTER, et al.	:	[Entered October 17, 1995]

ORDER

AND NOW, this 16th day of October, 1995, IT IS ORDERED that, as entered on the record of this same date, plaintiffs' complaint is dismissed without prejudice.

/S/ ANITA B. BRODY
Anita B. Brody, J.